

**HOUSE BILL NO. 361**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MCCABE, Rasmussen, Rauscher, Thompson, Cronk, McCarty

Introduced: 2/22/22

Referred: Resources, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act providing for a surcharge on oil produced in the state and delivered to a state**  
2   **that imposes a tax on fuel delivered to this state."**

3   **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4    \* **Section 1.** AS 43.55.023(c) is amended to read:

5           (c) A credit or portion of a credit under this section

6                   (1) may not be used to reduce a person's tax liability under  
7           AS 43.55.011(e) for any calendar year below zero;

8                   (2) may, if not used under this subsection, be applied in a later  
9           calendar year;

10                   (3) may, regardless of when the credit was earned, be used to satisfy a  
11           tax, interest, penalty, fee, or other charge that

12                           (A) is related to the tax due under this chapter for a prior year,  
13                   except for a surcharge under AS 43.55.201 - 43.55.299, [OR] 43.55.300, or  
14                   43.55.320 or the tax levied by AS 43.55.011(i) or 43.55.014; and

(B) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

\* **Sec. 2.** AS 43.55.023(e) is amended to read:

(e) A person to which a transferable tax credit certificate is issued under (d) of this section may transfer the certificate to another person, and a transferee may further transfer the certificate. Subject to the limitations set out in (a) - (d) of this section, and notwithstanding any action the department may take with respect to the applicant under (g) of this section, the owner of a certificate may apply the credit or a portion of the credit shown on the certificate

(1) against a tax levied by AS 43.55.011(e); however, a credit shown on a transferable tax credit certificate may not be applied under this paragraph to reduce a transferee's total tax liability under AS 43.55.011(e) for oil and gas produced during a calendar year to less than 80 percent of the tax that would otherwise be due without applying that credit; any portion of a credit not used under this paragraph may be applied in a later period; or

(2) regardless of when the credit was earned, to satisfy a tax, interest, penalty, fee, or other charge that

(A) is related to the tax due under this chapter, except for a surcharge under AS 43.55.201 - 43.55.299, [OR] 43.55.300, or 43.55.320 or the tax levied by AS 43.55.011(i) or 43.55.014;

(B) is for a calendar year before the year in which the certificate is applied; and

(C) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

\* **Sec. 3.** AS 43.55.025(h) is amended to read:

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax levied by AS 43.55.011(e). Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the

amount for which the certificate is issued. A production tax credit or a portion of a production tax credit or a production tax credit certificate or a portion of a production tax credit certificate allowed under this section

(1) may not be applied more than once;

(2) may be applied in a later calendar year;

(3) may, regardless of when the credit was earned, be applied to satisfy a tax, interest, penalty, fee, or other charge that

(A) is related to the tax due under this chapter for a prior year, except for a surcharge under AS 43.55.201 - 43.55.299, [OR] 43.55.300, or 43.55.320 or the tax levied by AS 43.55.011(i) or 43.55.014; and

(B) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

\* **Sec. 4.** AS 43.55.165(e) is amended to read:

(e) For purposes of this section, lease expenditures do not include

(1) depreciation, depletion, or amortization;

(2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue, except that a producer's lease expenditures applicable to oil and gas produced from a lease issued under AS 38.05.180(f)(3)(B), (D), or (E) include the share of net profit paid to the state under that lease;

(3) taxes based on or measured by net income;

(4) interest or other financing charges or costs of raising equity or debt capital;

(5) acquisition costs for a lease or property or exploration license;

(6) costs arising from fraud, wilful misconduct, gross negligence, violation of law, or failure to comply with an obligation under a lease, permit, or license issued by the state or federal government;

(7) fines or penalties imposed by law;

(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in,

1 or rights to production from, one or more leases or properties or a unit;

2 (9) costs incurred in organizing a partnership, joint venture, or other  
3 business entity or arrangement;

4 (10) amounts paid to indemnify the state; the exclusion provided by  
5 this paragraph does not apply to the costs of obtaining insurance or a surety bond from  
6 a third-party insurer or surety;

7 (11) surcharges levied under AS 43.55.201, [OR] 43.55.300, or  
8 43.55.320;

9 (12) an expenditure otherwise deductible under (b) of this section that  
10 is a result of an internal transfer, a transaction with an affiliate, or a transaction  
11 between related parties, or is otherwise not an arm's length transaction, unless the  
12 producer establishes to the satisfaction of the department that the amount of the  
13 expenditure does not exceed the fair market value of the expenditure;

14 (13) an expenditure incurred to purchase an interest in any corporation,  
15 partnership, limited liability company, business trust, or any other business entity,  
16 whether or not the transaction is treated as an asset sale for federal income tax  
17 purposes;

18 (14) a tax levied under AS 43.55.011 or 43.55.014;

19 (15) costs incurred for dismantlement, removal, surrender, or  
20 abandonment of a facility, pipeline, well pad, platform, or other structure, or for the  
21 restoration of a lease, field, unit, area, tract of land, body of water, or right-of-way in  
22 conjunction with dismantlement, removal, surrender, or abandonment; a cost is not  
23 excluded under this paragraph if the dismantlement, removal, surrender, or  
24 abandonment for which the cost is incurred is undertaken for the purpose of replacing,  
25 renovating, or improving the facility, pipeline, well pad, platform, or other structure;

26 (16) costs incurred for containment, control, cleanup, or removal in  
27 connection with any unpermitted release of oil or a hazardous substance and any  
28 liability for damages imposed on the producer or explorer for that unpermitted release;  
29 this paragraph does not apply to the cost of developing and maintaining an oil  
30 discharge prevention and contingency plan under AS 46.04.030;

31 (17) costs incurred to satisfy a work commitment under an exploration

1 license under AS 38.05.132;

2 (18) that portion of expenditures, that would otherwise be qualified  
3 capital expenditures, as defined in AS 43.55.023, incurred during a calendar year that  
4 are less than the product of \$0.30 multiplied by the total taxable production from each  
5 lease or property, in BTU equivalent barrels, during that calendar year, except that,  
6 when a portion of a calendar year is subject to this provision, the expenditures and  
7 volumes shall be prorated within that calendar year;

8 (19) costs incurred for repair, replacement, or deferred maintenance of  
9 a facility, a pipeline, a structure, or equipment, other than a well, that results in or is  
10 undertaken in response to a failure, problem, or event that results in an unscheduled  
11 interruption of, or reduction in the rate of, oil or gas production; or costs incurred for  
12 repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or  
13 equipment, other than a well, that is undertaken in response to, or is otherwise  
14 associated with, an unpermitted release of a hazardous substance or of gas; however,  
15 costs under this paragraph that would otherwise constitute lease expenditures under (a)  
16 and (b) of this section may be treated as lease expenditures if the department  
17 determines that the repair or replacement is solely necessitated by an act of war, by an  
18 unanticipated grave natural disaster or other natural phenomenon of an exceptional,  
19 inevitable, and irresistible character, the effects of which could not have been  
20 prevented or avoided by the exercise of due care or foresight, or by an intentional or  
21 negligent act or omission of a third party, other than a party or its agents in privity of  
22 contract with, or employed by, the producer or an operator acting for the producer, but  
23 only if the producer or operator, as applicable, exercised due care in operating and  
24 maintaining the facility, pipeline, structure, or equipment, and took reasonable  
25 precautions against the act or omission of the third party and against the consequences  
26 of the act or omission; in this paragraph,

27 (A) "costs incurred for repair, replacement, or deferred  
28 maintenance of a facility, a pipeline, a structure, or equipment" includes costs  
29 to dismantle and remove the facility, pipeline, structure, or equipment that is  
30 being replaced;

31 (B) "hazardous substance" has the meaning given in

AS 46.03.826;

(C) "replacement" includes renovation or improvement;

(20) costs incurred to construct, acquire, or operate a refinery or crude oil topping plant, regardless of whether the products of the refinery or topping plant are used in oil or gas exploration, development, or production operations; however, if a producer owns a refinery or crude oil topping plant that is located on or near the premises of the producer's lease or property in the state and that processes the producer's oil produced from that lease or property into a product that the producer uses in the operation of the lease or property in drilling for or producing oil or gas, the producer's lease expenditures include the amount calculated by subtracting from the fair market value of the product used the prevailing value, as determined under AS 43.55.020(f), of the oil that is processed;

(21) costs of lobbying, public relations, public relations advertising, or policy advocacy.

\* **Sec. 5.** AS 43.55.201(b) is amended to read:

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharges [SURCHARGE] imposed by AS 43.55.300 - 43.55.320 [AS 43.55.300 - 43.55.310].

\* **Sec. 6.** AS 43.55.300(b) is amended to read:

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharges [SURCHARGE] imposed by AS 43.55.201 - 43.55.231 and 43.55.320.

\* **Sec. 7.** AS 43.55 is amended by adding a new section to article 3 to read:

**Sec. 43.55.320. Surcharge levied on crude oil exported to a state that taxes fuel delivered to this state.** (a) Every producer of oil shall pay a surcharge of \$15.75 a barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation, that is delivered to a state that

1 taxes fuel delivered to this state.

2 (b) The surcharge imposed by (a) of this section is in addition to the tax  
3 imposed by AS 43.55.011 and is due on the last day of the month on oil produced  
4 from each lease or property during the preceding month. The surcharge is in addition  
5 to the surcharges imposed by AS 43.55.201 - 43.55.231 and 43.55.300.

6 (c) A producer of oil shall make a report of production on March 31 of the  
7 year following the calendar year of production and in the same manner and under the  
8 same penalties as required under AS 43.55.011 - 43.55.180.

9 (d) In this section, "fuel" includes fuel used

10 (1) in an engine for the propulsion of a motor vehicle or aircraft;

11 (2) in and on watercraft for any purpose;

12 (3) in a stationary engine, machine, or mechanical contrivance that is  
13 run by an internal combustion motor; or

14 (4) to heat private or commercial buildings or facilities.

15 \* **Sec. 8.** AS 43.55.900(24) is amended to read:

16 (24) "surcharge" means

17 (A) when used in AS 43.55.201 - 43.55.299, the surcharge  
18 levied by AS 43.55.201;

19 (B) when used in **AS 43.55.300 - 43.55.320** [AS 43.55.300 -  
20 43.55.310], the **surcharges** [SURCHARGE] levied by AS 43.55.300 **and**  
21 **43.55.320**;